IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 958 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

PRAHLADBHAI JOITARAM PAMAR

Versus

AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Appearance:
MR AR THACKER for the appellants
MR HS MUNSHAW for Respondent No.1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA
Date of decision: 10/05/99

ORAL JUDGEMENT : (Per J.N. Bhatt, J.)

Admit. Service of the notice is waived by Shri H.S. Munshaw, learned advocate for respondent no.1, original opponent no.1.

2. Shri A.R. Thacker, learned advocate for the appellants is permitted to delete respondent no.2, driver

of the bus. Upon the request of the learned advocates, in view of the peculiar facts and circumstances of the case and in the light of the sole contention based on no fault liability raised before us, the appeal is taken up today, upon consensus, for final hearing.

3. In this appeal under sec.173 of the Motor Vehicles Act, 1988 (Act No.59 of 1988) ("the Act" for brevity), the appellants who are the original claimants have challenged the judgment and award recorded by the Motor Accidents Claim Tribunal, at Ahmedabad, in Motor Accident Claim Petition No.360 of 1995 dated 26.9.1997, whereby, the claim petition for compensation on account of the vehicular accident against the respondents, original opponents came to be dismissed, interalia, holding that the driver of the offending bus was not proved to be accountable person for the happening of the unfortunate accident in which the deceased Kankuben Joitaram Parmar lost her life while alighting from the bus, route no.141 owned by Ahmedabad Municipal Transport Service ("AMTS" for brevity) in the city of Ahmedabad. Thus, the Tribunal reached to the conclusion that it was the deceased who was responsible for her accidental death as she tried to get down from a running bus when it was slowed down by the driver on account of traffic ahead of it at a place where there was no scheduled bus stop. The Tribunal, therefore, concluded that the allegation of tortuous liability on the part of the driver of the offending bus has not been proved and therefore, the original claim filed by the claimants, heirs of the deceased Kankuben for an amount of Rs.1,52,000/- came to be dismissed. That is how this appeal has come up before us at the instance of the appellants/ original claimants, heirs of the deceased Kankuben out of whom no.1 is the adult son, whereas nos.2 and 3 are the married daughters of the deceased.

4. Without entering into the arena as to whether the blameworthiness of being rash and negligent in driving the vehicle (Bus), which took toll of the life of the deceased, Kankuben, would lay on the part of the driver of the offending bus, the Tribunal ought to have considered the provisions of sec.140 of the Act as it then stood on the date of the accident which occurred on 23.10.1993. By the provisions of sec.140 of the Act at the relevant time under the Act (Act No.59 of 1988), no fault liability prescribed by the legislature in case of death was Rs.25,000/- which came to be upwardly revised by the Act (54 of 1994) with effect from 14.11.1994.

5. The liability without fault in certain cases has

been statutorily mandated in Chapter X, sec.140 of the Act. The liability to pay compensation in certain cases on the principle of no fault has a historical evolution and background. It is more akin to the doctrine of effective socio legal justice in a welfare state. Even in the old Act of 1939 in a case of hit and run, the statutory provision was incorporated in appropriate case for compensation in case of road accident to an extent. Thereafter, the Honourable Apex Court in various pronouncements enunciated and expounded that in the light of the socio economic structure of this country, wherein, almost majority of the people are illiterate and live below poverty line, the area of no fault liability and the resultant extent should be upwardly revised under sec.140 which would be in consonance and compatible with the preambular policy and doctrine of social welfare which we have adopted in our national charter, i.e. the Constitution of India. We may not go into further historical, philosophical or social dimensions upon which the doctrine of no fault liability is evaluated in a revolutionary way, at this juncture, in this matter, but suffice it to say that this doctrine is a very important facet of tort's jurisprudence and there is a purpose and policy behind it.

6. Be that as it may, the question that is raised for our consideration, at this juncture, is as to whether the Tribunal while dismissing the claim for compensation based on tortuous liability arising out of vehicular accident resulting into death could have considered the doctrine of no fault liability which is, now, statutorily prescribed and provided by the legislature in its wisdom in sec.140 and 163A. Since the learned advocate for the appellants, original claimants has requested to consider no fault liability, the amount of compensation in the light of the provisions of sec.140 of the Act, even in absence of sec.163A, as it then stood on the date of the accident, we may, therefore, not go into the minute details insofar as the provisions of sec.163A of the Act are concerned.

7. It hardly would detain us any longer, upon a plain and prima facie perusal of the provisions of sec.140 of the Act as they stood then to award no fault liability amount as it then had prescribed to the extent of an amount of Rs.25,000/- in case of a fatal injury arising out of road accident and use of vehicle. Even assuming that the view taken by the Tribunal that there was no negligence or tortuous liability on the part of the driver of the offending bus was involved, then also in our opinion, the Tribunal ought to have considered the

relevant provisions as they stood then on the date of the accident and ought to have awarded at least an amount of Rs.25,000/- with proportionate cost and interest upon the doctrine of no fault liability, which is not only a benevolent provision in favour of the victims of the torts, but is obligatory for the adjudicating machinery to consider, apply and award in a given case to the victims of road accident or even the heirs of the victim of the road accident when factum of accident and resultant injury has not been questioned.

8. The following aspects have remained unquestionable and uncontroverted.

There was an accident, on 23.10.1993, at about 12.20 Noon, when the deceased Kankuben, mother of the claimants, appellants, herein, was travelling by AMTS Bus, route no.141, she was thrown out of the Bus due to impact of which she has sustained serious injuries and consequently she has succumbed to the same. The factum of accident is thus, nolonger in dispute. The dispute revolves around the blameworthiness which came to be adjudicated upon by the Tribunal against the claimants and in favour of the opponents. We have, without entering into that area, only concentrated upon the no fault liability. Thus, there was no dispute about the factum of accident and resultant death of Kankuben or the involvement of the AMTS Bus in question.

9. After having considered the provisions of sec.166 in general and subsection (4) thereof in particular, as also provisions of sec.140 and the spirit of sec.163A of the Act coupled with various celebrated pronouncements, it is needless to emphasise that in such cases of compensation, arising out of motor accidents, to the victims or their dependents or legal heirs, the role of the Tribunal is altogether different and technical principles or ignorance or illiteracy of the claimants who are lowly and lost; dejected and rejected; poor, downtrodden, ignorant and illiterate victims of road accidents or dependents or legal representatives should not be allowed to suffer from enjoying fruits of benevolent provisions incorporated in the Act upon. The technicalities or rules of evidence or procedural irregularities are hand- made. It is in this context sec.166(4) of the Act is provided by the Parliament in its wisdom, which prescribes that cognisance of rightful claim could be taken note of or could be considered upon the report of the accident forwarded to it under subsec.6 of sec.158 as an application for compensation under this Act. It is not like a suit, not like a case where strict

pleadings are required, but by virtue of the benevolent provision and simplified procedure, for filing of an application for compensation. These are the material aspects which undoubtedly indicate that the role and status of the civil court in adversarial proceedings is different than the role and status of a Tribunal in a benevolent provision for compensation to be paid to the victims of road accident under the Act, where the court working as Tribunal is not in that sense performing its duties, not an arbiter or a referree or an umpire, but is obliged to work as a custodian or in the form of loco-parentis. In short, the role and status of the Tribunal while dealing with, deciding and determining the rightful claim is on higher pedestal and we hope and trust that the Tribunals henceforth shall not remain oblivious to the statutory mandate which has a historic background and substantial purpose and policy and philosphy behind it.

10. In the circumstances, the impugned award, as it stands today, is required to be quashed and set aside and substituted by an amount of Rs.25,000/- by way of compensation for the death of the deceased Kankuben, arising out of use of AMTS Bus of the respondent, upon the doctrine and principle enshrined in sec.140 of the Act, as they stood then on the date of the accident, on the foundation of celebrated concept of no fault liability. In the result, the appellants, original claimants are held entitled to an amount of Rs.25,000/- (Rupees twenty five thousand only) along with interest at the rate of 15 per cent per annum from the date of application till realisation with proportionate cost from the respondent, original opponent. The Appeal to that extent stands allowed. The impugned award and judgement shall stand modified to that extent. The award shall be drawn in terms of this direction. The respondent, AMTS is directed to deposit the amount as aforesaid before the Tribunal within a period of six weeks from today, failing which it will be open for the claimants to execute the award in accordance with law. Upon the amount being deposited it will be open for the Tribunal to pass appropriate orders and directions for disbursement and deposit in the light of the facts and circumstances after making apportionment between the three original claimants, out of whom the earning mature son was separated and two daughters, one of whom was with the deceased at the relevant time as she had sought help of her mother upon the occasion of the delivery. Therefore, the apportionment amongst the original claimants shall be equitable and on the principle of the extent of dependency, if any by the Tribunal concerned.

11. The Appeal is partly allowed. Rule is made absolute to the aforesaid extent.

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